Reg. No. K. 107.

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XX] Trivandrum, Thursday 20th February 1975 / 1st Phalguna 1896 [No. 87

GOVERNMENT OF KERALA

Water and Power (Electricity A) Department

NOTIFICATION

No. 2561/ELA2/75/W&P. *Dated, Trivandrum, 20th February 1975.*

S. R. O. No. 166|75.—Whereas Sri P. Velayudhan Nair, I. A. S., Special Secretary to Government, Finance Department, who was appointed as Ex-Officio Member of the Kerala State Electricity Board has proceeded on leave preparatory to retirement from 1st February, 1975;

AND Whereas Sri K. V. Rabindran Nair, I. A. S., has assumed charge as Secretary, Finance Department in his place;

Now, Therefore, in exercise of the powers conferred by section 5 of the Electricity (Supply) Act, 1948 (Central Act 54 of 1948), the Government of Kerala hereby appoint Sri K. V. Rabindran Nair, Secretary, Finance Department, as Ex-Officio Member of the Kerala State Electricity Board till 31-5-1976 after noon.

By order of the Governor,
G. GOPALAKRISHNA PILLAI,
Secretary.

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33/503/M.C.

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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 1264/LA4A/75. *Dated, Trivandrum, 20th February 1975.*

The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Bill, 1975 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Dr. R. Prasannan,
Secretary,
Legislative Assembly.

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33/516/MC.

Fourth Kerala Legislative Assembly

Bill No. 213

THE KERALA SCHEDULED TRIBES (RESTRICTION ON TRANSFER OF LANDS AND RESTORATION OF ALIENATED LANDS) BILL, 1975

A

BILL

to provide for restricting the transfer of lands by members of Scheduled Tribes in the State of Kerala and for the restoration of possession of lands alienated by such members and for matters connected therewith.

Preamble.—WHEREAS it is expedient to provide for restricting the transfer of lands by members of Scheduled Tribe in the State of Kerala and for the restoration of possession of lands alienated by such members and for matters connected therewith;

BE it enacted in the Twenty-sixth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "competent authority", with reference to any land, means the District Collector of the district in which the land is situate or any other officer appointed by the Government to be the competent authority for the purposes of this Act for the area in which that land is situate;

(b) "immovable property" includes standing crops and trees but does not include growing grass;

(c) "prescribed" means prescribed by rules made under this Act;

(d) "Revenue Divisional Officer", with reference to any land, means the Revenue Divisional Officer having jurisdiction over the

area in which that land is situate or any other officer appointed by the Government to perform the functions of the Revenue Divisional Officer under this Act, in the area in which that land is situate;

(e) "Scheduled Tribes" means the Scheduled Tribes in relation to the State as specified in the Constitution (Scheduled Tribes) Order, 1950;

(f) "State" means the State of Kerala;

(g) "transfer", in relation to immovable property, means an act by which immovable property is conveyed by any documentary or oral transaction, whether by way of mortgage with or without possession, lease, sale, gift or exchange, or in any other manner, not being a testamentary disposition; and includes a charge, 'vilapanayam', undaruthi', contract relating to immovable property, mortgage, pledge or hypothecation of crops or standing trees on payment of consideration or otherwise, voluntary surrender and abandonment;

Explanation.—For the purposes of this clause,—

(i) "vilapanayam" means hypothecation of crops on payment of consideration or otherwise;

(ii) "unduruthi" means an assignment of the right to collect the usufructs available or anticipated to be available on any land during a specified term for a specified price;

(h) "Welfare Officer" means any officer appointed by the Government to do welfare work among the members of the Scheduled Tribes within a specified area.

3. *Exemptions.*—Nothing contained in this Act shall apply to—

(a) the lease of any land or building or both granted by the Administrator General, Official Trustee or Official Receiver; or

(b) the mortgage, pledge or hypothecation of any immovable property by a member of a Scheduled Tribe in favour of the Government as security for the purpose of obtaining any loan or other assistance from the Government;

(c) the mortgage, pledge or hypothecation of any immovable property by a member of a Scheduled Tribe in favour of a co-operative society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969) or a Corporation or a nationalised bank or any other financing agency not being a private agency or a money-lender, as security for any loan advanced by such society, corporation, bank or other agency.

4. *Restriction on transfer.*—Notwithstanding anything to the contrary contained in any other law, or in any contract, custom or usage, or in any judgment, decree or order of any court, any transfer effected by a member of a Scheduled Tribe, of immovable property possessed, enjoyed or owned by him, on or after the commencement of this Act to a person other than a member of a Scheduled Tribe, without the previous consent in writing of the competent authority, shall be invalid.

5. *Certain transfers to be invalid.*—Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any contract, custom or usage, or in any judgment, decree or order of any court, any fraudulent transfer of immovable property possessed, enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe, effected on or after the 1st day of January, 1970, and before the commencement of this Act shall be deemed to be invalid.

Explanation.—In this section, "fraudulent transfer" means any transfer effected without adequate consideration or a transfer effected by misrepresentation or fraud on the part of the transferee.

6. *Reconveyance of land.*—(1) Where by reason of a transfer of immovable property which is invalid under section 4 or section 5, a member of a Scheduled Tribe has ceased or ceases to be in possession or enjoyment thereof he shall be entitled to the restoration of possession or enjoyment, as the case may be, of such property.

(2) Any person entitled to be restored to the possession or enjoyment of any immovable property under sub-section (1) or any other person on his behalf may make an application, either orally or in writing, to the Revenue Divisional Officer—

(a) for restoration of possession or enjoyment as the case may be, of such property, if such transfer had been made before the date of the commencement of this Act; or

(b) for restoration of possession or enjoyment, as the case may be, of such property and for the prosecution of the person who has procured such transfer if such transfer was made on or after the date of the commencement of this Act.

(3) On receipt of an application under sub-section (2), the Revenue Divisional Officer shall make or cause to be made necessary inquiries in respect of such application and, if he is satisfied that the applicant or the person on whose behalf the application

has been made is entitled to restoration of possession or enjoyment, as the case may be, of the immovable property mentioned in the application, he shall, by order, direct the person in possession of such property to deliver possession thereof to the applicant or to the person on whose behalf the application has been made, or, as the case may be, to allow him to enjoy such property, within a period of thirty days from the date of service of the order and also specify the compensation payable under section 10:

Provided that no order under this sub-section shall be made unless the person in possession or enjoyment of the property has been given a reasonable opportunity of being heard in the matter.

(4) Every order made under sub-section (3) shall be served on the person for whom it is intended,—

(a) by delivering or tendering it to that person; or

(b) if it cannot be delivered or tendered to that person, by delivering or tendering it to any officer of such person or any adult member of the family of such person or by affixing a copy thereof or the outer-door or some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for gain; or

(c) failing service by any of these means, by registered post.

(5) Any person aggrieved by an order of the Revenue Divisional Officer under Sub-section (3) may, within a period of thirty days from the date of service of the order, prefer an appeal to the competent authority, and the decision of the competent authority on such appeal shall be final and shall not be called in question in any court of law.

(6) Where an order under sub-section (4) has not been complied with, and

(a) an appeal has not been preferred within the time allowed for such appeal; or

(b) an appeal having been preferred has been dismissed, the Revenue Divisional Officer shall cause the immovable property to which the order relates to be delivered to the transferor by putting him in possession or enjoyment of that property, if need be, by removing any person who refuses to vacate the same.

7. *Burden of proof*.—Where, in any proceedings under this Act, or in the trial of an offence punishable under section 11, the validity of any transfer of immovable property is called in question, the burden of proof of the validity shall, notwithstanding anything contained in any other law for the time being in force, lie on the person who claims such transfer to be valid.

8. *Inadmissibility of deeds for purposes of registration.*—Notwithstanding anything contained in the Registration Act, 1908 (Central Act 16 of 1908), no deed of transfer of any immovable property executed in contravention of or contrary to the provisions of this Act shall be accepted in registration.

9. *Prohibition to attachment of immovable properties*.—For the execution of a money decree against a member of a Scheduled Tribe, no right or interest held by him in any immovable property, shall be liable to be attached or sold except to the extent and in the manner prescribed.

10. *Liability to pay compensation.*—(1) Notwithstanding anything contained in any other law for the time being in force, where the possession or enjoyment of any immovable property is restored to a member of a Scheduled Tribe under this Act, compensation of an amount equal to the actual amount of consideration received by such member at the time of the transfer and compensation for improvements, if any, made after the transfer and before such restoration shall be paid by him to the person from whom possession or enjoyment, as the case may be, was restored. In accordance with the rules made under this Act:

Provided that no compensation shall be payable if the transfer was effected on or after the commencement of this Act.

(2) The compensation payable under sub-section (1) shall be recoverable in such manner as may be prescribed.

11. *Offences and penalties.*—Any person who on or after the commencement of this Act procures transfer of any immovable property in contravention of the provisions of section 4, shall be punishable with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

12. *Cognizance of offences.*—(1) No court inferior to that of a Magistrate of the First Class shall try any offence punishable under this Act:

Provided that the Government may constitute one or more than one special court exclusively for the trial of the offences under this Act.

(2) In a case where transfer of immovable property in contravention of section 4 has been made on or after the commencement of this Act, the Revenue Divisional Officer shall file a complaint to the Magistrate having jurisdiction or to the special court as the case may be, for the trial of the offence under this Act;

(2) Any person aggrieved by a transfer or dispossession or eviction by any other person may also himself directly file a complaint before a Magistrate having jurisdiction or to the special court as the case may be, for the trial of the offence under this Act.

13. *Bar on proceedings against Scheduled Tribes under Chapter X of the Code of Criminal Procedure.*—Where a person claiming to be a member of a Scheduled Tribe or any other person is put in possession by order of the Revenue Divisional Officer for the restoration of possession or enjoyment of any land under the provisions of this Act, then notwithstanding anything contained in any other law for the time being in force, no Magistrate shall have jurisdiction under Chapter X of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) in respect of any dispute between that person and any other person claiming to be in possession or enjoyment of the said land.

14. *Powers of competent authority and Revenue Divisional Officer.*—(1) The competent authority and the Revenue Divisional Officer while holding enquiries under this Act shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) any other matter which may be prescribed.

(2) The decision of the competent authority and the Revenue Divisional Officer under this Act shall have the force of a decree of a civil court.

15. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, the Government may, by notified order, not inconsistent with the provisions of this Act, which appears to them necessary for the purpose of removing the difficulty.

16. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against any person for anything done or intended to be done in good faith under this Act or the rules made thereunder.

17. *Saving of other laws.*—The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matters dealt with in this Act, except to the extent provided in this Act.

18. *Bar of jurisdiction of civil courts.*—No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is, by or under this Act, required to be settled, decided or dealt with or to be determined by the competent authority or the Revenue Divisional Officer.

19. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

It has been noticed that the extent of land which has been under the traditional occupation of the Scheduled Tribes in the State is steadily on the decrease due to alienation, lease, mortgage and above all, due to unauthorised occupation of tribal lands by non-tribal people. In tribal areas the unsophisticated tribals are being duped into transactions which make them part with their traditional lands for very small sums of money. The Evaluation Committee constituted by the Government in 1961 had suggested that special legislation should be introduced to protect the interests of the tribals in lands under their traditional occupations; and that this legislation should result in a general prohibition of transfers whether by sale, Mortgage, gift or lease of tribal lands to non-tribal people. The Scheduled Areas and Scheduled Tribes Commission (Dhebar Commission) had also made similar recommendations.

2. It is proposed to accept the recommendations of the committees mentioned above and to enact a law restricting the transfer of lands belonging to Scheduled Tribes. The Bill is intended for this purpose.

FINANCIAL MEMORANDUM

According to clause 2(a) of the Bill, the District Collector or any other officer appointed by the Government shall be the competent authority for the purposes of the Act. Similarly, clause

2 (d) defines Revenue Divisional Officer as the Revenue Divisional Officer having jurisdiction or any other officer appointed by the Government. It will not be necessary to appoint any new officer for performing the function of the competent authority or the Revenue Divisional Officer and therefore no expenditure is likely to be involved in respect of the competent authority and the Revenue Divisional Officer.

The proviso to sub-clause (1) of clause 12 of the Bill seeks to empower the Government to constitute special courts exclusively for the trial of the offences under the Act. If the number of offences under the Act are too many and such large number of cases cannot be dealt with by the existing Magistrates of the First Class, it may be necessary to constitute special courts exclusively for the trial of the offences under the Act. The amount of expenditure on account of the special courts will depend upon the number of special courts that may have to be constituted and the period for which they have to function. Therefore, it is not possible at this stage to estimate with any degree of accuracy the expenditure to be incurred in the matter.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (a) of clause 2 of the Bill seeks to empower the Government to appoint any officer to be the competent authority for the purposes of the Act. Under sub-clause (d) of clause 2, Government have power to appoint any officer as Revenue Divisional Officer for the purposes of the Act. Clause 15 of the Bill seeks to empower the Government to issue orders not inconsistent with the provisions of the Act for removing difficulties in giving effect to those provisions. Clause 19 of the Bill seeks to empower the Government to make rules to carry out the purposes of the Act. The matters in respect of which rules may be made include the extent to which and the manner in which right or interest held by members of Scheduled Tribes may be attached or sold (clause 9), the manner of payment of compensation to the transferees [clause 10(1)], the manner of recovery of compensation from the person to whom land has been restored [clause 10(2)] and the additional powers that may be conferred on competent authority and Revenue Divisional Officer [clause 14(1)(c)].

The above are matters of procedure or detail or of an administrative nature. The delegation of legislative power is therefore of a normal character.

BABY JOHN.

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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 1229/LA4/75. *Dated, Trivandrum, 20th February 1975.*

The Calicut University Bill, 1975 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,
Secretary,
Legislative Assembly.

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